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Report of the Working Group on the Universal Periodic Review*

Czechia

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

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1. The Czech Republic presents its response to recommendations made during the Universal Periodic Review on 6 November 2017. The following brief comments set out the Czech Republic's position on each recommendation. References are made to the National Report of the Czech Republic for the third cycle of the Universal Periodic Review[1] and to the Report of the Working Group on the Universal Periodic Review concerning the Czech Republic[2].

I. The Czech Republic notes recommendations No. 2–4, 14, 21, 51, 66, 101–103, 105, 109, 149, 153, 160, 161, 163, 190, 193, 194, 196, 197, and 201. The rationale for this position is the following

2. The Czech Republic notes recommendations No. 2–4 concerning ratification of the International Convention on the Rights of Migrant Workers and Members of Their Families, with reference to the Czech Republic's long-term position on this Convention.[3] The Czech Republic notes recommendation No. 14 concerning the International Labour Organization Indigenous and Tribal Peoples Convention (No. 169), pointing out that it has no indigenous or tribal populations in its territory. The Czech Republic notes recommendation No. 21 to sign the Treaty on the Prohibition of Nuclear Weapons, pointing out that in its view the Treaty does not offer an effective path to nuclear disarmament as it only duplicates the existing international obligations.

3. The Czech Republic notes recommendation No. 51, adding that in its view it has already complied with this recommendation. Its existing criminal legislation makes it a crime to incite hate for a group of persons and to call for restrictions on the group's rights and freedoms, to defame a nation, race, ethnic or other group, to commit violence against groups or individuals, and to establish, support, promote and express sympathy for a movement whose aim is to suppress human rights. Public insults of a racist nature and public manifestations of racism and discrimination are caught by the definitions of these crimes.[4]

4. The Czech Republic notes recommendation No. 66 to introduce public action for victims of hate crimes. Czech criminal procedure is based on the accusatory principle (the criminal justice process is initiated by an action brought by the public prosecutor). Therefore it is not possible to apply the "public action rule of standing". The existing rules recognise the special vulnerability of hate violence victims and entitle them e.g. to free-of-charge expert assistance. Any crime victim may join criminal proceedings as the injured party, and the offender may be ordered to pay damages to the victim. Victims of violent hate crimes (and survivors of victims) are entitled to financial assistance from the government. Alternatively, the victim may claim damages through civil action. Based on the above, the Czech Republic believes that victims' rights are sufficiently protected.[5]

5. The Czech Republic notes recommendations No. 101–103, 105, and 109. In accordance with its position[6], it maintains that the principal means of redress for victims of illegal sterilisation is through court action seeking compensation for non-pecuniary harm. The competent authorities duly examined every criminal complaint filed in connection with the illegal sterilisation cases, and in each of the cases the criminal justice process was duly brought to a conclusion in accordance with the Code of Criminal Procedure. The cases are now statute-barred. On the other hand, the Czech Republic supports recommendation No. 106 and is willing to consider revising the three-year time limit for seeking compensation for non-pecuniary damage. However, it is to be noted that it would be contrary to good morals to apply the revised time-limit indiscriminately. In the interests of legal certainty, the longer time-limit would apply only to future cases, not to past cases. The Czech Republic also supports recommendation No. 108, pointing out that its new healthcare regulations (2012) establish a procedure for obtaining the patient's free and informed consent to treatment, including sterilisation. The aim is specifically to prevent non-consensual sterilisation, as has been described during the interactive dialogue.[7] The Czech Republic also supports recommendations No. 104 and 107, pointing out that its laws do not permit sterilisation of persons with limited legal capacity unless required for compelling

medical reasons. In such cases, sterilisation must be approved by the patient's guardian, an expert commission and a court. The patient is informed about all aspects of the issue, he/she has a voice in the decision-making process and his/her views are taken into account.

6. The Czech Republic notes recommendations No. 149 and 153 to ban corporal punishment in all settings. The Czech Republic regards corporal punishment of children as inadmissible. Children are entitled to treatment respecting their rights and human dignity. There is a ban on corporal punishment of children in all public institutions such as schools and childcare institutions. In family setting, the parenting style must not undermine the child's human dignity and physical, mental and emotional development. Parents who violate these rules are liable for penalties. In extreme cases the parents may face criminal prosecution and the child may be taken away. The same rules apply to foster carers.[8]

7. The Czech Republic notes recommendations 160 and 161, adding that in its view it has already complied with these recommendations. The Czech Criminal Code now recognises child prostitution as a crime under the broader "human trafficking" heading (the elements include using a child for sexual intercourse or for other forms of sexual abuse or harassment). In broader terms, sexual exploitation of children is caught by definitions of crimes such as sexual abuse, sexual coercion, and rape. It is a crime to produce or use pornography, to misuse a child for the production of pornography, and to attend pornographic performances involving child performers. "Child pornography" is defined as a photographic, film, computer-generated, electronic or other pornographic work that depicts or otherwise uses a child or a person appearing to be a child. "Prostitution" is defined as engaging in sexual contact with others for payment, including sexual intercourse as well as other forms of satisfying, by means of physical contact, the sexual impulses of a person of the same or opposite sex. Prostitution of children under 18 years of age may also fall under the heading of "enticing children to engage in sexual intercourse".[9]

8. The Czech Republic notes recommendation No. 163 to eliminate restrictions that may limit the legal capacity of persons with disabilities. The new Civil Code (2014) does not make it possible to completely deprive a person of legal capacity. Partial limitation of legal capacity is admissible as a means of last recourse. The 2014 Civil Code introduces support measures to ensure that the disabled person is able to manage his/her day-to-day affairs without having to give up their legal capacity (interim declaration, supported decision-making, representation by a household member, and the possibility to appoint a guardian without depriving the ward of full legal capacity). The new system is now in its initial stages, including the training of judges and judicial staff, healthcare and social work professionals and other stakeholders. The Ministry of Justice monitors the use of the new tools, and will analyse the case law to identify the rights that are as a rule taken away from persons with limited legal capacity (voting rights, the right to marry, the rights to parental responsibility). Additional measures, if any, will be taken following sufficient analysis of the practice.

9. The Czech Republic notes recommendation No. 190 proposing that detained aliens should not pay the costs of their detention. Aliens are detained only if they are present in the Czech Republic's territory illegally. The costs of detention are not claimed from detainees who have returned to countries of origin. The aim of this policy is to encourage a speedy and voluntary return, which in turn shortens the time spent in detention and minimises the costs.

10. The Czech Republic notes recommendations No. 193, 194, 196, and 197 to end the detention of migrants, including minor children. The law expressly prohibits the detention of vulnerable asylum seekers, including families with children. Other aliens may be detained in special facilities (not in prisons housing regular offenders) if they are present in the Czech Republic illegally and awaiting removal. Even in such cases, detention is a means of last resort, to be used if there is no other solution (such as reporting obligations or bail). Thanks to this policy, the number of people actually held in detention remains relatively low. The Czech Republic sees no reason to completely stop detaining illegal migrants, since detention contributes to an effective returns policy. Moreover, children are not detained – they stay in the facility together with their detained parents only if there is no possibility of care available outside the facility. What is more, families with children are placed in a special facility designed to meet their needs which is subject to further

adaptations. The above shows that the Czech Republic makes every effort to avoid detaining families with children and, in situations where detention cannot be avoided, to ensure that the detention setting reflects international standards and case law.[10]

11. The Czech Republic notes recommendation No. 201, pointing out that at present it refrains from participating in the EU relocation scheme on the basis of a position approved by the government. Regarding other issues raised in this recommendation: the Czech Republic's administrative removal process fully respects the non-refoulement principle. The law prohibits administrative removal to countries where the alien would face the risk of imposition or execution of the death penalty, or the risk of being subjected to torture or inhuman or degrading treatment or punishment, or the risk of violence posing a grave risk to life or violating human dignity in situations of international or internal armed conflict. Aliens who have a pending application for international protection cannot be removed by administrative order. Applications for international protection are received at border crossing points, asylum reception centres and detention facilities.

II. The Czech Republic supports the remaining recommendations and adds the following comments on some of them

12. The Czech Republic's strategies on racism and hate-motivated violence, Roma integration, gender equality, prison system, human trafficking, rights of the child, rights of persons with disabilities and integration of aliens will remain in place, and will be applied consistently to enable these and other groups to fully enjoy their rights. Czech law enforcement authorities will continue their policy of thoroughly investigating and prosecuting racist and hate crime, and victims of these crimes will enjoy the support described above. A new campaign against hate violence is in progress. There is an ongoing discussion on the future accreditation of the Public Defender of Rights (Ombudsperson) as national human rights institution; the government will continue to facilitate the process.[11] The Ombudsperson now serves as national anti-discrimination body; she/he may assist victims, analyse situations, and make recommendations.[12]

13. Regarding recommendation No. 8, the Czech Republic adds it has ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography already in 2013. Regarding recommendation No. 82, the Czech Republic adds that surgical castrations of prisoners and detainees are prohibited. Regarding recommendation No. 136, the Czech Republic adds that the Health Services Act includes an extensive catalogue of patients' rights reflecting international standards, including women's reproductive rights (free choice of provider, respect for the patient's wishes, privacy and dignity, presence of a close person, etc.). Healthcare professionals are trained on the appropriate approach to patients, and are required to be responsive and to respect the wishes of patients. Regarding recommendation No. 165, the Czech Republic adds that the Antidiscrimination Act prohibits discrimination of persons with disabilities in all areas, including access to employment. Persons with disabilities are fully integrated in the free labour market. Regarding recommendation No. 184, the Czech Republic adds that migrant women have the same access to healthcare services as Czech nationals, and may not be denied such services on the basis of their residence status.

Notes

[1] A/HRC/WG.6/28/CZE/1.
[2] A/HRC/37/4.
[3] See A/HRC/WG.6/28/CZE/1, para. 4 and A/HRC/37/4, para. 6.
[4] See A/HRC/WG.6/28/CZE/1, para. 34 and A/HRC/37/4, para. 16.
[5] See A/HRC/WG.6/28/CZE/1, paras. 14 and 35.
[6] See A/HRC/WG.6/28/CZE/1, paras. 52 and 53, and A/HRC/37/4, para. 10.
[7] See A/HRC/37/4, para. 64.
[8] See A/HRC/WG.6/28/CZE/1, para. 15.
[9] See A/HRC/WG.6/28/CZE/1, para. 13, or A/HRC/37/4, para. 111.

[10] See A/HRC/WG.6/28/CZE/1, para. 56, or A/HRC/37/4, para. 112.
[11] See A/HRC/WG.6/28/CZE/1, para. 22, or A/HRC/37/4, para. 68.
[12] See A/HRC/WG.6/28/CZE/1, para. 6 or A/HRC/37/4, para. 67.